12-7-73

UNITED STATES OF AMERICA

BEFORE THE

ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
DUKE POWER COMPANY	)	Docket Nos. 50-269A, 50-270A
(Oconee Units 1, 2 and 3	)	50-287A, 50-369A
McGuire Units 1 and 2)	)	50-370A

SUPPLEMENTAL MEMORANDUM OF DEPARTMENT OF JUSTICE ON ATTORNEY-CLIENT PRIVILEGE

To the Special Master:

This memorandum by the Department of Justice is submitted to supplement the memorandum filed by the Department on November 19, 1973, concerning the scope and application of attorney-client privilege. The discussion contained herein will be limited to the application of attorney-client privilege to the so-called "CARVA documents," i.e., documents addressed to or from, or circulated among the parties to the Carolinas-Virginia Power Pool Agreement. The parties to the Agreement, which was terminated in 1970, were Duke Power Company, Carolina Power & Light Company, South Carolina Electric & Gas Company, and Virginia Electric and Power Company, four privately owned utilities operating in the three-state area of Virginia, North Carolina, and South Carolina.

I. Legal Status of CARVA

CARVA was not an entity in itself, but was rather a contractual agreement between four separate corporate entities.

The purpose of the agreement was to attain maximum economy and bulk power supply reliability through planning and coordinating the power production resources of the four companies with a view to common usefulness.

The agreement did not constitute a merger or joint venture, but formed one type of what is generally called a "power pool." For these purposes, we adopt the definition of power pool set forth in "The 1970 National Power Survey," Federal Power Commission, Part I-17-2:

> The term 'formal power pool' as used here means two or more electric systems which coordinate the planning and/or operation of their bulk power facilities for the purpose of achieving greater economy and reliability in accordance with a contractual agreement that establishes each member's responsibilities. Individual members usually are able to obtain the economic and other advantages available to much larger systems while retaining their separate corporate identities.

CARVA was listed in the "Survey" as a formal power pool.

The CARVA Agreement states " . . . each Company will retain its separate corporate identity and individual freedom in rendering service to the public within its respective area." (Recitals to Agreement) The relationship of the Companies to each other and to third parties is stated as follows:

> §13. Independent Contractors. - By entering into this Agreement for contractual coordination of power production and transmission facilities, the Companies shall not become partners, but, as to each other and to third persons, the Companies shall remain independent contractors in all matters relating to this Agreement.

Thus, the agreement itself makes the legal status of the parties abundantly clear--they are parties to a contract and for the purposes of the privilege, nothing more.

II. The CARVA Pool in Perspective

These are many different types of coordination agreements, but most of them could be classified as falling within one of two broad categories (listed in ascending degree of complexity):*/ (1) operating coordination making the best cooperative use of existing facilities, and (2) coordinated development which involves making the best cooperative use of new and existing generation and/or transmission facilities.

Pooling under the broad heading of coordinated development, the second category listed above, could be further broken-down into four general types (also listed in ascending degree of complexity): (a) simple transfers of bulk power from one company's system to another system and not from any particular unit, (b) sales of capacity and energy from particular units which have been developed according to the pooling plan, (c) joint ventures or common ownership involving specific generation and/or transmission facilities, and (d) pooling development and operation carried out by a separate operating company which functions on behalf of the pool members.

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*/ See Generally, "Methods of Owning and Selling Generating Capacity," Report of the Task Force on Interconnection Arrangements of the Edison Electric Institute, August, 1965; "The 1970 National Power Survey," Federal Power Commission, Part I-17.

The types of pooling involved in (c) and (d) above frequently appear in holding companies, such as the American Electric Power system, or other arrangements of common ownership. Pooling in categories (a) and (b) above involve no common ownership but are accomplished through contractual agreements between the companies. While the corporate interests of the member companies may be bound together to a certain extent in (c) and (d), there is simply no reduction of corporate soverignty in pools of the (a) and (b) types. With regard to attorney-client privilege, we suggest drawing the line to deny the privilege to (a) and (b) and to extend the privilege to (c) and (d) to the extent there is a common corporate interest in the particular communication involved.

The CARVA Agreement would fall within category (b) discussed above. CARVA unquestionably was a sophisticated agreement involving a high degree of coordination. However, the CARVA companies were not bound together to the magnitude of holding companies or joint enterprises with common ownership of facilities; nor was CARVA operated as a single system. Certain generating facilities of each company were designated as "participation units" and purchases and sales of capacity and energy between the companies were sales from these certain facilities, as opposed to the single-system concept. (Letter of Mr. Carl Horn to Mr. Gordan Grant, Secretary of FPC, July 10, 1970, Doc. No. 20236). In addition, CARVA had no central economic dispatch as in more highly developed pools.

"The 1970 National Power Survey (Part I-17-2) states that use of the power pool as a coordinating mechanism increased" from 9, with 23 percent of the nation's generating capacity in 1960, to 23 with 60 percent of the capacity in 1970." Of these 22 power pools, 5 "are holding company groups, with membership consisting only of corporate affiliates." Pools with noncorporately affiliated members "increased from 4 to 17 in the 1960-1970 period" with a corresponding increase in the proportion of the nation's generating capacity owned by these pool members from 12 percent to more than 50 percent. A hasty check of the 22 pools listed by the Survey reveals that 131 separate electric power companies held pool membership 1970. Of these 131 companies, 22 are holding company affiliates and 109 companies are noncorporately affiliated pool members.

This arithmetic analysis is given to indicate the Department of Justice's alarm over the prospect of extension of attorney-client privilege to the widespread mechanism of power pools between noncorporately affiliated electric power companies. Granting the privilege to the CARVA documents in question here, could conceivably serve as a precedent for withholding communications between pooling groups of 109 separate electric power companies.

Antitrust enforcement in the electric power industry could be dealt a severe blow by permitting such a protected "zone of silence" for communications between attorneys of

separate corporations. Seventeen power pools representing 109 corporations (nearly all of which are privately owned utilities) and over half the nation's generating capacity, could effectively immunize conspiratorial conduct from anti-trust prosecution by the simple expediency of having their attorneys carry out the conspiracy. The court in Radio Corp. of America v. Rauland Corp., 18 F.R.D. 448, 443 (N.D. Ill. 1955) was cognizant of this concern in denying the privilege "to communications between directors, officers, or agents of different corporations which are made or conducted by men who happen to be members of the bar." Focusing specifically on alleged conspiratorial conduct, the court stated, "To hold otherwise would lead to the ridiculous result that conspiracies formed and conducted by lawyers on behalf of corporations would be beyond the reach of the law."

Further, extending the privilege to CARVA would be inconsistent with the general rule of construction set-forth by Wigmore and followed consistently by courts. Since the "benefits are all indirect and speculative" while "its obstruction is plain and concrete," the privilege "ought to be strictly confined within the narrowest possible limits consistent with its principle." 8 Wigmore, Evidence, §2291 at 554 (McNaughten rev. 1961). In the instant case, the shroud of privilege unquestionably obstructs the search for the truth while yielding no compelling need for application of the privilege. Each of the four companies was able to communicate in confidence with its attorney; and if all the requirements

of the privilege were met, the policies of extending the privilege would outweigh the policies of disclosure. However, there is no justification for extending the privilege to situations where Duke's general counsel was advising VEPCO, or even where Duke's general counsel was advising Duke's management and transmitted informational copies to the other companies. To be sure, the four companies had to communicate about CARVA matters, but why should these intercorporate communications be privileged? Here, the policies of full disclosure of all relevant information clearly dominate over any possible need for privilege.

CARVA represented a pooling of power and facilities for mutual economic benefit; it was not a pooling of corporate interests. A May 9, 1967, press release of Applicant quoting Mr. McGuire, President of Duke Power Company, makes this clear: "McGuire emphasized that the CARVA Pool is an engineering plan and has nothing to do with the ownership or financial status of the individual companies." (Applicant's Doc. No. 21138) The contract itself, in addition to reciting that the companies will not become partners but will be independent contractors, to each other and to third parties, states further: (a) each company shall construct and pay for its own facilities and be the sole owner of those facilities, regardless of the extent those facilities are used in the Pool - §3; (b) each company shall keep its own records - §4; (c) each company shall seek regulatory authorization - §5. It is also significant that CARVA had no separate operating company, as in some pools, no central staff, and no general counsel.

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CARVA had no interests apart from the separate and often different interests of the four parties. A July 14, 1969, letter of Arthur M. Williams, Jr., President of South Carolina Electric & Gas, to Shearon Harris, President of Carolina Power & Light, is illustrative (Applicant's Doc. No. 46550):

> . . . We have been talking here in the Company for sometime about what we feel is the necessity for providing at least one common designate to act as executive director--or whatever the title might be--of the Pool. As matters now stand, no one is, in reality, advancing the interest of the Pool without some regard to the interest of his respective company. As I recall, this possibility was discussed in the early beginnings of the Pool, but shelved. I agree that the time has certainly come to take it off the shelf; and, I believe, to implement it.

To the best of our knowledge, despite Mr. William's suggestion no executive director or manager was ever appointed. Thus, not only the Pool agreement, but the actual operation of the Pool evince a clear intent to keep corporate affairs apart while cooperating in technological or engineering matters for mutual economic benefit.

The companies stood not as partners or joint venturers, but as parties to a mutually beneficial contract. We submit that the management of each company owed a fiduciary duty to its corporation, but no such duty existed between the four companies inter sese as in the case of partners. For example, VEPCO had no right or duty to participate in a decision by Duke to issue securities, declare dividends, promote personnel, or settle a dispute with a cooperative over territory to

be served. In short, while nonaffiliated electric power companies may pool generating facilities for mutual benefit, they pool corporate affairs and legal advice at their own risk. If the privilege is to be extended to any power pools, it should be those where corporate interests are inseparable from engineering or technological interests, as in holding companies, and not where corporate interests are intentionally kept out of the pool.

Perhaps the only direct precedent available for this problem is the decision by the Board In the Matter of Consumers Power Co., (Midland Plant, Units 1 and 2), AEC Docket Nos. 50-329A, 50-330A (1973), holding that a letter between attorneys for Consumers Power Co. and the other members of the MIIO group, was not privileged (see attachments for "the 1970 National Power Survey's" descriptions of MIIO and CARVA). MIIO is a planning and operating agreement between six privately owned utilities in Michigan, Indiana, Illinois, and Ohio. While not as extensive or sophisticated as CARVA, MIIO, as reported by the "Survey" involves substantial intercompany development and operation of facilities, including: coordinated load projections, coordinated planning for reserves, coordinated system stability studies, joint or staggered participation in facilities development, exchanges of capacity and energy, coordination of reserve including spinning reserve, and coordination of maintenance. The significant point is that

both CARVA and MIIO involved cooperative use of technology and facilities and not pooling of corporate affairs. The CARVA documents, like the MIIO letter, are not validly privileged.*/

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*/ See also the attached letter between an attorney for Consumers Power Co. and the attorney for the Village of Chelsea, Michigan, conferring about testimony to be presented before the Michigan Public Utilities Commission, which was found not privileged by the Consumers Board.

III. Special Note on DOJ Nos. 86 and 88

The Department sees no possible justification for extending the privilege to DOJ Nos. 86 and 88. In DOJ No. 86, Mr. Horn, General Counsel of Duke, apparently rendered legal advice to his client, Mr. Parker, Executive Vice President of Duke about a proposed agreement between South Carolina Electric & Gas and S. C. Public Service Authority (Santee-Cooper). Assuming all the requirements of the privilege were present, the document would be privileged.

However, DOJ No. 87 transmitted copies of DOJ No. 86 to members of the Executive Committee of CARVA. (DOJ Nos. 86 and 88 are the same document.) This act destroyed the requirement of confidentiality for sustaining the claim of privilege. Accordingly, the document cannot be privileged.

Applicant offers as justification for this breach of confidentiality, an apparent link between CARVA and the proposed agreement in question. It appears that Santee-Cooper, desiring membership in CARVA, was refused such membership and offered an agreement with S.C.E.&G. instead. If this be the case, the matter in question involved the corporate affairs of S.C.E.&G. and Santee-Cooper. Duke has no legal right to advise or discuss with another company the corporate affairs of that company and expect the communications to be privileged.

CARVA was an engineering plan accomplished by contractual agreement; CARVA had no interests of its own and the corporate interests of the four parties were intentionally kept out of CARVA.

Mr. Horn was not an attorney for S.C.E.&G., or any other CARVA member. Each company had its own attorney and was quite capable of receiving privileged legal advice without relying on the general counsel of another company. If Mr. Horn was attempting to advise other corporations, the privilege fails for lack of an attorney-client relationship. If Mr. Horn was simply advising his own client, and informational copies were sent to the other companies, the privilege fails due to breach of confidentiality.

The Department submits that the denial of access to coordination to Santee-Cooper by refusing it membership in CARVA, may have been one element of a conspiracy between four separate corporations. Conspiratorial communications cannot be privileged simply because an attorney is involved. Radio Corp. of America v. Rauland Corp., 18 F.R.D. 440, 443 (N.D. Ill. 1955). Granting the protection of privilege to DOJ Nos. 86 and 88 is not only legally wrong but obstructs the search for truth while distorting the policies on which the privilege is founded.

Conclusion

For the reasons stated above, the Department asks the Special Master to find the CARVA documents not privileged.

Respectfully submitted,

C. Kent Hatfield

C. Kent Hatfield

Wallace E. Brand

David A. Leckie

Attorneys
Antitrust Division
Department of Justice

December 7, 1973
Washington, D.C.

Section I—Coordinated Planning and Development
"MIIO" GROUP (Michigan-Indiana-Illinois-Ohio)

1. *Type of Organization*

Planning and Operating Agreement.

2. *History of Development*

Starting in 1963, representatives of the Michigan Pool (Consumers Power Company-The Detroit Edison Company), American Electric Power, Commonwealth Edison Company, Northern Indiana Public Service Company and The Toledo Edison Company formed a planning group to investigate the technical and economic feasibilities of EHV interconnections between Michigan and Indiana and between Michigan and Ohio. This group also developed preliminary contractual agreements for consideration of each party's management. In March 1966 interconnection agreements between the above parties were signed by the managements of the parties. Two 345,000 volt double circuit interconnections are to be constructed and be in service in 1969. Michigan terminals of one of these double-circuit lines will be at Detroit Edison's Wayne Substation with the lines proceeding south through Consumers Power territory with one southern termination at Toledo Edison's Lemoyne Substation and the other termination at AEP's Fosteria Central Substation. The other 345,000 volt double-circuit interconnection is to terminate at Consumers Power's Palisades Substation and the lines proceed southward to AEP's Olive and Twin Branch Substation.

3. *List of Members*

a. Consumers Power Company.
b. The Detroit Edison Company.
c. Northern Indiana Public Service Company.
d. Commonwealth Edison Company.
e. American Electric Power.
f. The Toledo Edison Company.

4. *Requirements for Participation*

Limited to the six parties as listed in 3 above.

5. *Organizational Structure including Official Positions, Any Committees and their Functions, and Methods of Arriving at Decisions Affecting Members of the Coordinating Group*

Two committees have been established to carry out the objectives of the parties under the MIIO Agreement. A Planning Committee and an Operating Committee.

a. The responsibilities of the Planning Committee include:
   (1) Initiating studies and investigations leading to mutually agreed upon recommendations to the parties concerning adequacy of interconnection facilities, staggering of construction and adequacy of generating reserves, both individually and collectively.
   (2) Keeping abreast of all advances in engineering technology in fields allied to its responsibilities and recommending the development and adoption of new methods and possible modifications of the interconnection agreements.
   (3) The conducting of engineering studies to determine the feasibility of increasing or affirming the effective amount of emergency interconnection assistance available.

b. The duties of the Operating Committee include:
   (1) The coordination of the operation of each party's respective facilities in order to carry out the terms of the agreements.
   (2) All matters pertaining to the coordination of maintenance of the generating and transmission facilities of the parties.
   (3) All matters pertaining to the control of time, frequency, energy flow, kilovar exchange, power factor, voltage, and other similar matters bearing upon the satisfactory synchronous operation of the systems of the parties.
   (4) Such other matters not specifically provided for in the agreements upon which cooperation, coordination and agreement as to quantity, time, method, terms and conditions are necessary in order that the operation of the systems of the parties may be coordinated to the end that the potential savings in operating costs will be realized to the fullest practical extent.

General

All decisions respecting expenditures for interconnection facilities are mutually agreed upon by the managements of the parties.

350-239 O - 71 - 18

6. *Practices in the Planning and Development of Facilities*

a. *Coordinated load projections*

Each party develops individually its own load projections for the existing year and future years up to and including 20-year projections for economic studies. The combined loads are utilized by the Planning Committee in all their engineering and economic studies.

b. *Coordinated planning for reserves*

The reserve requirement for each party is developed individually by each party. However, the year-by-year planned reserves of the entire group are reviewed by the Planning Committee to determine the adequacy or inadequacy of reserve generating capacity and transmission facilities being provided. If it should be found that one party is placing a burden upon the other, the party causing such burden shall take such measures as are necessary to remove the burden from the other parties or the parties shall enter into such arrangements as shall provide for equitable compensation.

Probability analyses of each party's generating units are conducted with further probability studies meshing the entire group performed to determine on a probability basis the reserve required for a given planning criteria.

c. *Coordinated system stability studies*

Comprehensive system stability and load flow studies are conducted for all years beginning with the in-service date of the interconnections. They include studies for that year and studies for future years with the addition of new generating units and new interconnections. These studies are run for selected contingencies and include disaster cases such as loss of an entire generating plant.

d. *Joint or staggered participation in facilities development*

The interconnections are participated in jointly. The contracts have provision for staggering of construction of generating facilities and will be implemented throughout the years.

7. *Operating Practices*

a. *Exchanges of capacity and energy*

The agreements have provisions for firm purchases and sales of capacity and energy from specific units or from a system for a long-term purchase. The contracts also have provision for capacity and energy transactions on a short-term basis, i.e., weekly. For emergency conditions all reserve in the entire pool is available to the party that is meeting the emergency. The contracts have provision for exchange of energy for maintenance coordination and for exchange of energy on an economic basis with such costs being made on a split-the-savings basis. Provisions for seasonal diversity exchanges are also included.

b. *Coordination of reserve including spinning reserve*

As stated in Item 6 above, the planned reserve for the Group is coordinated by the Planning Committee. At the time the interconnections are in service there will be complete coordination of spinning reserve.

c. *Coordination of Maintenance*

At the time the interconnections are in service the day-to-day maintenance is planned to be coordinated to assure maximum reliability of the systems. Maintenance coordination is presently being utilized for planning purposes by the Planning Committee.

d. *Economic dispatch including description of control facilities*

Michigan, which includes Consumers Power and Detroit Edison, will operate at the time these interconnections are in service from a Joint Dispatch Center which will be completely coordinated with the other parties' dispatch centers.

CHAPTER IV

STATEMENT OF COORDINATION

General

Coordination of operating procedures and planning for reliability of power supply are in effect between the various systems in the Southeast. This is being implemented by Reliability Coordination Agreements between neighboring systems and pools, as well as by joint study programs conducted by systems on a less formal basis. Discussions are now being held to put into effect other similar formal agreements.

In most cases, the work involved in coordination is carried out by committees or special working groups. These committees meet periodically for the purpose of discussing problems and implementing studies leading to increased reliability. These discussions and studies deal with matters such as generation and transmission planning, construction schedules, operation, maintenance schedules, spinning reserve requirements, and mutual assistance during emergencies.

Statements on coordination prepared by the various systems are listed below.

CARVA Pool

The CARVA Pool, comprised of Carolina Power & Light Company, Duke Power Company, South Carolina Electric & Gas Company, and Virginia Electric and Power Company, was formed after several years' planning and negotiation directed toward increasing coordination over the wide geographical area served by the companies. The agreement, which went into full effect on May 1, 1967, was the culmination of efforts based on a mutual desire to attain maximum economy and bulk power supply reliability for the benefit of over 2.6 million customers in the States of North Carolina, South Carolina, Virginia, and a small part of West Virginia. Under the CARVA agreement, the companies are specifically committed to undertake joint planning and operation of transmission and generation. This now is being accomplished through various committees and special working groups on which each company has representation. Implementation of the agreement has permitted members to install larger size units with attendant economies in first cost and operation, and has resulted in the shared development of plans for an extensive EHV bulk power transmission system among the Pool companies. Some 450 miles of 500-kilovolt transmission will be in service by 1975, with a major portion completed by 1972.

Further, other such committees and special working groups plan and coordinate operational matters, generation schedules, construction and maintenance schedules, reserve requirements and power interchange.

The CARVA Pool companies, individually and collectively, continue to be active in working with area and regional groups interested in coordination of electric facilities for maximum reliability and economy of service to all customers in their service area.

In April 1967, the CARVA Pool members signed a reliability agreement with members of The Southern Company Power Pool intended to further augment reliability of each company's bulk power supply through coordination of the companies' planning for and operation of their generation and bulk power transmission facilities.

An inter-area reliability coordination agreement was executed between CARVA, East Central Area Reliability Coordination Committee, and Middle Atlantic Area Reliability Coordination Committee on November 15, 1968. A possible coordination agreement with TVA is also being studied.

Joint studies of bulk power transmission facilities are in progress between the CARVA companies and the American Electric Power System; CARVA and the Southern companies; and CARVA and the PJM interconnection.

All the CARVA companies have been part of the Interconnected Systems Group for many years.

Each individual member has interconnection

agreements with its neighbors which to a greater or lesser degree, involve purchase and sale of power, exchange of information, mutual assistance during emergencies, establishment of operating procedures and joint studies of plans for transmission affecting more than one company, all of which contribute to improved coordination. These interconnection agreements, for the most part, were in existence before formation of the CARVA Pool and before the inter-area agreements referred to above were concluded. They continue as effective complements to the more embracing inter-area agreements.

The CARVA Pool companies are represented on the National Electric Reliability Council.

The Florida Group

For purposes of this report, the five major utilities in Peninsular Florida, who coordinate their operations through informal committee action, are identified as the Florida Group; furthermore, for simplicity, this group is sometimes referred to as a "Pool" with the understanding the term is applied in the broadest sense, and does not connote a formal pool.

Peninsular Florida is served by five principal suppliers, Florida Power Corporation, Florida Power & Light Company, Tampa Electric Company, and the municipal systems of Jacksonville and Orlando. These suppliers, surrounded on three sides by water, subjected to hurricanes and the highest incidence of lightning in the nation, undertake to stand on their own feet and provide their own reserves. They are strongly interconnected and comprise what has come to be known as the Florida Group. In emergencies each supplier aids the Florida system in trouble to the maximum extent of its resources. Notwithstanding the fact that each Florida supplier operates his own system in the most economical manner consistent with its individual requirements and policies, there is a strong recognition of the need to coordinate operating matters.

An informal committee was established in January 1939 by the three investor-owned utilities listed above for considering and coordinating mutual problems relating to interconnected operation. The committee consisted of engineering and operating personnel, and informal meetings were held on a randomly scheduled basis. As the activities of the informal committee proved to be beneficial, representatives of the Jacksonville and Orlando municipal systems were asked to participate. They began participating several years ago, so that their operations would be better coordinated with those of the three investor-owned systems. The committee members have no authority to enter into contractual agreements, to commit their organization to construction of facilities, nor to establish practices which are not in accord with individual organization policy. The committee does serve as an excellent medium through which mutual operating problems are reviewed and resolved in such a manner that technical operations are very well coordinated. This committee, known as the Florida Operating Committee, now meets on a bi-monthly basis. In its meetings, it focuses attention on such matters as spinning reserve, underfrequency relay protection, relaying and adequate communications between dispatching centers. It also coordinates maintenance schedules and recommends and organizes long-range planning studies and stability examinations for use by the five individual utilities. There are no "pooling" contracts or commitments among these systems.

Spinning reserve is voluntarily shared and maintained to protect the instantaneous loss of the largest generating unit in service. The reserve is distributed to enough operating units with proper governor characteristics so that a frequency drop of less than five-tenths of a cycle will provide the full benefits of each member's share of assistance. The full share of each member's reserve must be available to all other members and not restricted by limitation of transformers, lines or other equipment. In abnormal situations where the spinning reserve of a member is either unavailable or only partially available, the member notifies the others so that their spinning reserves may be increased or reallocated as required. Every system disturbance is thoroughly analyzed by the operating committee to check the response of the generating units of each member in meeting the emergency. The amount of spinning reserve required is constantly under review.

To avoid an excessive number of generating units being out of service simultaneously for maintenance and to insure the maximum availability of installed reserves, the five individual systems coordinate their maintenance schedules through the Florida Operating Committee.

Load shedding has been used as an emergency procedure by members of the Florida Group since 1957. For some time two of the systems have had capability of shedding more than 1,000 megawatts of load by underfrequency relays, and since the five systems are strongly tied together, this protection

INTERNAL CORRESPONDENCE

Consumers Power Company

Jackson, Michigan
October 13, 1967

Mr. W. J. Mosley
Parnall Road

Enclosed is copy of a letter dated October 13, 1967 which I have sent to each lawyer representing a party to the M-I-I-O contracts. The enclosures with the letter set forth the proposed revisions to the Facilities Agreement and the proposed amendment to the Operational Agreement between the Michigan Companies and Indiana Company. The enclosures are the same as those which you reviewed pursuant to my letter of September 25 except that no reference to the cross-State lines to be constructed by Consumers Power and Detroit Edison is made in Section 1.03 of the Facilities Agreement.

The map (Appendix A) reflects the proposed changes which I discussed with you by telephone yesterday. If you are not in agreement with all of the changes on the map, please contact me on Monday and I will notify the other lawyers by letter of your desired corrections.

Yours very truly,

H. P. Graves

HPG/sb
Enc

25513

H. P. Graves
General Counsel

Consumers
Power
Company

General Offices: 212 West Michigan Avenue, Jackson, Michigan 49201 • Area Code 517 788-0910

October 13, 1967

With reference to my letter of August 11, 1967, I am enclosing new drafts concerning the proposed changes in the Facilities Agreement and in the Operating Agreement between the Michigan Companies and Indiana Company. The new drafts have also been sent to each of the other lawyers representing a party to the M-I-I-O contracts.

In connection with the Facilities Agreement, the changes are so numerous that it would appear desirable to have a new printing of the entire Agreement so as to have a "clean" copy. Accordingly, one of the enclosures sets forth the portions of the Facilities Agreement as to which changes will be made and I have underlined the changes. Attached to this enclosure is a proposed revision of the map (Appendix A) on which I have made several additional proposed changes. The balance of the Agreement does not appear to require any modification, except that the date on the cover should be changed from March 1, 1966 to September 1, 1967 and the reference to Appendix A in the Contents should conform to the new caption of Appendix A.

With respect to the Operating Agreement between the Michigan Companies and Indiana Company, the words "Indiana Company" should be changed to "Consumers" in line 3 of Section 3.02. Since this is the only change to be made in this Agreement, I suggest that the change be handled by a Supplemental Agreement as set forth in the enclosure.

I hope that we can conclude this matter at an early date. To this end, I would appreciate receiving your comments by October 20, 1967, if possible.

Sincerely yours,

HPG/sb
Enc

H. P. Graves

25514

DOJ Note: The agreement itself is not enclosed in its bulk.

COPY

CONSUMERS POWER COMPANY

GENERAL OFFICES ◦ JACKSON, MICHIGAN

LEGAL DEPARTMENT

H. P. GRAVES
GENERAL COUNSEL
J. B. FALAHEE
GENERAL ATTORNEY
S. H. REDNER
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W. R. MILLS
R. P. DUFF
J. L. BACON
R. F. GODBOUT
A. B. BASS
ATTORNEYS

January 12, 1965

POOR ORIGINAL

Mr. John P. Keusch
Attorney at Law
Chelsea, Michigan

Dear John:

Enclosed, for the initialing of Exhibit B by Messrs. Knoelschwardt and [illegible] and execution by the Village as its executed copy, is the original of our September 1, 196[illegible] agreement. Exhibit B has been initialed on behalf of Consumers by Mr. R. P. Briggs, Executive Vice President. We have initialed and retained as our executed copy of the contract the duplicate original which you sent to me on January 6, 1965. A conformed copy of the contract is enclosed for your files.

Also enclosed is a draft of Public Service Commission testimony for Mr. [illegible]. Please advise as to whether or not it is accurate and a correct reflection of Mr. [illegible]'s views. In particular, the peak demand figure may by this time require revision upward.

Yours very truly,

Judd L. Bacon

JLB:vl
Enc.

BCC: JBFalahee
FBAdams
WJJefferson

25659

(115)

JOHN P. KEUSCH
ATTORNEY AT LAW
CHELSEA, MICHIGAN

23 December 1964

Mr. Judd Bacon,
Attorney
1037 Consumers Power Company Building
212 Michigan Avenue,
Jackson, Michigan

Dear Judd:

In accordance with our conversation of yesterday, there is enclosed herewith the Village's copy of the September 1, 1964 Agreement with Consumers Power Company relating to the sale of certain distribution facilities and a contract for future service.

Exhibit "B" being a copy of the proposed Bill of Sale has been altered by deleting the words "outlined in green" so as to conform with the language of the Agreement. Mr. Howard Haselschwardt, village president and George Winans, village clerk, have initialed the change. At such time as a proper representative of Consumers Power Company has indicated approval of the change, you may return the Agreement to either Mr. Winans or myself. It is my understanding that we will receive the Consumer Power Company's copy of the Agreement in exchange for the one enclosed.

Mr. Nixon will, I am sure, prior to the hearing have an independent statement as to the replacement costs of the distribution facilities being acquired by the Village. This will remove any doubt occasioned by his belief that the Village could have constructed duplicate facilities for a lesser sum.

Very truly yours,

John P. Keusch

JPK:mp
Encl.

UNITED STATES OF AMERICA

BEFORE THE

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In the Matter of	)	
	)	
DUKE POWER COMPANY		Docket Nos. 50-269A, 50-270A
(Oconee Units 1, 2 and 3	)	50-287A, 50-369A
McGuire Units 1 and 2)	)	50-370A

CERTIFICATE OF SERVICE

I hereby certify that copies of SUPPLEMENTAL MEMORANDUM OF DEPARTMENT OF JUSTICE ON ATTORNEY-CLIENT PRIVILEGE, dated December 7, 1973, in the above-captioned matter have been served on the following by deposit in the United States mail, first class or air mail, this 7th day of December:

Honorable Walter W. K. Bennett
Chairman, Atomic Safety and
Licensing Board
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